

MEMO ENDORSED

07 Civ. 10644, J

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ENERGY BRANDS INC. d/b/a GLACÉAU,

Plaintiff,

v.

SPIRITUAL BRANDS, INC. and ELICKO
TAIEB,

Defendants.
-----X

07 Civ. 10644 (DC)

STIPULATION AND ORDER

The undersigned counsel for plaintiff Energy Brands Inc. d/b/a Glacéau ("Glacéau") and defendants Spiritual Brands, Inc. ("Spiritual Brands") and Elicko Taieb ("Taieb") (collectively, "Defendants") hereby stipulate and agree as follows:

1. On November 28, 2007, Glacéau filed the complaint in this action against Defendants, alleging, *inter alia*, trade dress infringement and false designation of origin, trade dress dilution, deceptive acts and practices and unfair competition. The complaint was served on defendant Taieb on December 3, 2007 (and again on December 19, 2007) and on defendant Spiritual Brands on December 19, 2007. The December 19, 2007 service on both Defendants was effected by serving the complaint on Defendants' previous counsel pursuant to an agreement by such counsel to accept service on behalf of Defendants.

2. Defendant Taieb was required to respond to the complaint within 20 days of service, or December 21, 2007. Defendant Spiritual Brands was required to respond to the Complaint within 20 days of service, or January 8, 2008. Neither defendant

responded or otherwise moved in respect to the complaint by their foregoing respective deadlines.

3. On January 11, 2008, counsel for Glacéau agreed to an extension of time for Defendants to file answers to the complaint. Defendants' answers to the complaint are now due on or before January 28, 2008.

4. On January 11, 2008, counsel for Defendants agreed that, in exchange for this extension, Defendants would waive their rights to challenge the complaint on the grounds of (a) lack of subject matter jurisdiction, (b) insufficient process, or (c) insufficient service of process.

SO ORDERED this 22 day of January, 2008

Denny Chin, U.S.D.J. 1/22/08

STIPULATED TO BY:

ENERGY BRANDS INC. d/b/a GLACÉAU

By its attorneys,

S. Zev Parnass
David H. Bernstein
S. Zev Parnass
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
(212) 909-6000 (phone)
(212) 909-6836 (fax)
dhbernstein@debevoise.com
szparnass@debevoise.com

SPIRITUAL BRANDS, INC. and ELICKO
TAIEB

By their attorneys,

Scott Zarin 1/17/08
Scott Zarin
Zarin & Associates
45 West 21 Street, 4th Floor
New York, New York 10010
(212) 580-3131 (phone)
(212) 580-4393 (fax)
scottzarin@copyrighttrademarkcounsel.com